

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**JERRY LEON DEES, JR.,**

**Plaintiff,**

**v.**

**HYUNDAI MOTOR MANUFACTURING  
ALABAMA, LLC, and HYUNDAI  
MOTOR AMERICA, INC.,**

**Defendants.**

**CIVIL ACTION NO.:  
2:07-cv-00306-MHT-CSC**

**DEFENDANT’S MOTION FOR LEAVE OF COURT TO FILE MOTION IN LIMINE  
TO EXCLUDE PLAINTIFF’S TESTIMONY REGARDING LOST WAGES AND  
BENEFITS BASED ON THE COURT’S SUMMARY JUDGMENT RULING**

Defendant Hyundai Motor Manufacturing Alabama, LLC (“HMMA”) files this motion for leave of Court to file an additional motion in limine to exclude the testimony of Plaintiff (and any other witness) regarding any alleged lost wages and benefits, based on the Court’s recent ruling dismissing Plaintiff’s USERRA Termination claim. In support, Defendant states:

1. On May 21, 2008, this Court entered an Opinion (Doc. 186) and Judgment (Doc. 187), dismissing, among other things, Plaintiff’s USERRA termination claim.

2. Though Plaintiff’s USERRA “harassment” claim against Defendant survived Defendant’s motion for summary judgment, he cannot recover monetary relief based on this claim alone. The statute expressly limits recovery to lost wages, benefits, and equitable relief. 38 U.S.C. § 4323 (d) and (e).

3. In light of the Court's dismissal of Plaintiff's USERRA termination claim, Plaintiff's testimony, and the testimony of others, about Plaintiff's lost wages and benefits has no relevance. See F. R. Evid. 401. Further, such testimony, if allowed, could only confuse the jury and unfairly prejudice Defendant by creating the incorrect inference that Plaintiff may recover monetary damages with no legal basis for doing so. See F. R. Evid. 403.

4. A copy of Defendant's Motion in Limine to Exclude Plaintiff's Testimony Regarding Lost Wages and Benefits on the Court's Summary Judgment Ruling is attached hereto as Exhibit A.

Respectfully submitted this the 23rd day of May, 2008.

/s/ J. Trent Scofield  
Timothy A. Palmer (PAL-009)  
J. Trent Scofield (SCO-024)  
T. Scott Kelly (KEL-053)  
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Attorneys for Defendants Hyundai Motor  
Manufacturing Alabama, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23rd day of May, 2008, I electronically filed the foregoing *Defendants' Motion for Leave of Court to File Motion in Limine to Exclude Plaintiff's Testimony Regarding Lost Wages and Benefits Based on the Court's Summary Judgment Ruling* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: W. Perry Hall, Vincent F. Kilborn, III, David Allen McDonald, Jeffrey Rayborn Sport, Timothy A. Palmer, T. Scott Kelly, and Matthew K. Johnson.

/s/ J. Trent Scofield  
OF COUNSEL

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# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**JERRY LEON DEES, JR.,**

**Plaintiff,**

**V.**

**HYUNDAI MOTOR MANUFACTURING  
ALABAMA, LLC, and HYUNDAI MOTOR  
AMERICA, INC.,**

## Defendants.

**CIVIL ACTION NO.:  
2:07-cv-00306-MHT-CSC**

**DEFENDANT’S MOTION IN LIMINE AND SUPPORTING AUTHORITIES  
TO EXCLUDE TESTIMONY REGARDING LOST WAGES AND BENEFITS BASED  
ON THE COURT’S SUMMARY JUDGMENT RULING**

Defendant Hyundai Motor Manufacturing Alabama, LLC (“HMMA” or “Defendant”), through undersigned counsel, respectfully moves this Court *in limine* for an Order directing Plaintiff, his witnesses, and his attorneys not to mention or bring before the jury, either directly or indirectly, upon voir dire, reading of the pleadings, statement of the case, interrogation of witnesses, argument, or objections before the jury of any of the following without first having called such matters to the Court’s attention, out of the presence of the jury, and obtained a favorable ruling as to the admissibility of any such matters.

This motion in limine is specifically directed to any testimony, comments, or arguments regarding Plaintiff's alleged lost wages and benefits. In support of this motion, Defendant states:<sup>1</sup>

1. On May 21, 2008, this Court entered an Opinion (Doc. 186) and Judgment (Doc. 187), dismissing, among other things, Plaintiff's USERRA termination claim.

2. Though Plaintiff's USERRA "harassment" claim against Defendant survived Defendant's motion for summary judgment, he cannot recover monetary relief based on this claim alone. The statute expressly limits recovery to lost wages, benefits, and equitable relief. 38 U.S.C. § 4323 (d) and (e).

3. In light of the Court's dismissal of Plaintiff's USERRA termination claim, Plaintiff's testimony, and the testimony of others, about Plaintiff's lost wages and benefits has no relevance. See F. R. Evid. 401. Further, such testimony, if allowed, could only confuse the jury and unfairly prejudice Defendant by creating the incorrect inference that Plaintiff may recover monetary damages with no legal basis for doing so. See F. R. Evid. 403.

WHEREFORE, premises considered, HMMA respectfully requests that this Court enter an Order precluding Plaintiff, Plaintiff's witnesses, and Plaintiff's attorneys from introducing into evidence, making comments or giving any testimony concerning, or making any argument relating to Plaintiff's alleged lost wages or benefits in the presence of the jury. Likewise, HMMA requests the Court to give limiting instructions at the appropriate times to avoid the concerns addressed by Fed.R.Evid. 403.

Respectfully submitted this 23rd day of May, 2008.

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<sup>1</sup> In order to streamline the pleadings in this action, Defendant has included the applicable authorities in support of this motion in limine. Defendant respectfully requests that this pleading be considered both as a motion and supporting brief.

/s/ J. Trent Scofield

Timothy A. Palmer (PAL-009)  
J. Trent Scofield (SCO-024)  
T. Scott Kelly (KEL-053)  
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Attorneys for Defendants Hyundai Motor  
Manufacturing Alabama, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23rd day of May, 2008, I electronically filed the foregoing *Defendant's Motion in Limine and Supporting Authorities to Exclude Plaintiff's Testimony Regarding Lost Wages and Benefits Based on the Court's Summary Judgment Ruling* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: W. Perry Hall, Vincent F. Kilborn, III, David Allen McDonald, Jeffrey Rayborn Sport, Timothy A. Palmer, T. Scott Kelly, and Matthew K. Johnson.

/s/ J. Trent Scofield

J. Trent Scofield (SCO-024)

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